Champalal Sethia Vs Ramprosad Karnani and Company

Court: Calcutta High Court

Date of Decision: Feb. 2, 1969

Hon'ble Judges: S.K. Chakravarti, J; P.N. Mookerjee, J

Bench: Division Bench

Advocate: Sudhansu Kumar Sen and Gaganendra Krisna Deb, for the Appellant;Susil Kumar Biswas, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Chakravarti, J.
This is an appeal at the instance of the Plaintiffs whose suit for ejectment of the Defendant-Respondent was dismissed

by the learned Subordinate Judge, Cooch Behar and whose appeal against the decision was also dismissed by the learned District Judge, Cooch

Behar. The Defendant admittedly was a tenant under the Plaintiffs in respect of the premises in suit. The Plaintiffs claimed to have determined the

tenancy by service of a notice to quit and filed the suit inasmuch as the Defendant had not vacated the premises. The Plaintiffs alleged further that

the Defendant was not entitled to the protection of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as "the Act"), inasmuch

as it had defaulted in the payment of rent for a period of more than four months and had also used a portion of the premises-in-suit for purposes

other than that for which it was let out. Both these pleas were negatived by the learned Subordinate Judge and the learned appellate Court and

hence this appeal.

2. With regard to the question of default, Mr. Sudhansu Kumar Sen, appearing on behalf of the Appellants, contends that the Courts below had

erred in holding that the Defendant had not defaulted in the payment of rent for five months, that is, Migsar Sudi Ekam 2014 S.Y. to Baisakh Bodi

15, 2015 S.Y. It appears that the rents for this period were deposited by the tenants at-the rate of Rs. 41-80 P. per mensem whereas the

contractual rent was Rs. 333-31 P. It appears, however, that on the tenants" application for fixation of rent, the rent was fixed at the rate of Rs.

41-80 P. per mensem and that was the rent which was prevalent at the time when the game were deposited in the office of the Rent Controller.

3. Mr. Sen contends that the order of the Rent Controller fixing the rent at that rate was later on set aside and accordingly, the rents should have

been deposited at the rate of Rs. 333-31 P. and the Defendant had deposited the balance after December 9, 1959, that is to say, long after the

order of the Rent Controller was set aside by the Subordinate Judge on April 1, 1958. He submits that the balance, should have been deposited

within a reasonable time. The Act contains no provisions as to when the arrears are to be deposited in such circumstances. It would further appear

from the evidence on record and as already found by the learned District Judge that the Defendant applied to the Rent Controller on June 12,

1958, that is to say, within two months from the time of the passing of the order by the learned Subordinate Judge praying for permission to

deposit the rents, but the learned Rent Controller passed no order on it. The application dated July 19, 1958, was also not considered and the

Rent Controller adjourned the matter sine the and on July 21, 1959, the Rent Controller passed all the challans without notice to the Defendant and

as soon as the Defendant came to know of it, it had deposited the balance. In the circumstances, it cannot be stated that the Defendant was

negligent in depositing the balance and as such, it cannot be held to be a defaulter within the meaning of the Act.

4. Mr. Sen further contends that these deposits are invalid inasmuch as there was no previous tender of the same by the Defendant to the Plaintiffs.

The fact remains that since long before these deposits the tenant had been depositing the rents with the Rent Controller and it was not possible for

it to know that the landlords would agree to accept the rents and in the circumstances, the question of any previous tender does not arise. On the

evidence also it would appear that the Defendant''s witness had deposed to the effect that there was such tender and the Defendant''s witness was

not cross-examined on that point.

5. Mr. Sen further contended that the Defendant had also defaulted in the payment of rents for four months from Asar Sudi Ekam 2016 S.Y. to

Kartick Bodi 15, 2016 S.Y. It appears that these defaults accrued after the institution of the suit and as such, cannot be considered to have put the

Defendant outside the pale of the Act for the purpose of ejectment. Moreover, these rents were deposited with the Rent Controller and as the law

now stands after amendment, such deposits would also be good deposits. We, therefore, hold that the Courts below were quite right in holding

that the Defendant had not defaulted in the payment of rents.

6. Mr. Sen further contends that the Courts below had erred in holding that the Defendant was not liable to ejectment for having used a portion of

the premises for purposes, other than for which it was let out. The premises were admittedly let out for non-residential purposes. It appears that a

kitchen also formed part of the premises which had been let out. Mr. Sen contends that this kitchen was used hot for purposes of a kitchen by the

Defendant, but as a godown for storing salt with the result that it had caused damage. The Courts below have found that it was not so used. They

had also found that even if the Defendant had not used the kitchen for purposes of a kitchen, that would not be user for purposes other than that

for which it was let out to the extent that it would entitle the Plaintiffs to sue the Defendant for ejectment. There was an agreement executed

between the parties in respect of this tenancy-in-suit. In para. 2 of this agreement it has been stated : ""The kitchen...can be used by the lessee for

kitchen purpose."" On this basis Mr. Sen contends that if the kitchen is used for purposes other than that of kitchen, it would be a user for purposes

other than for which it was let out. In Clause 6 and 7 of the lease, where the landlords intended that the particular portion should not be used for

any purposes, proper language to mean that had been used. That would show that the Plaintiffs were quite alive to the situation as to what they

should do to prevent the use of the particular portion of the premises for other purposes. It is quite clear, on a reading of the whole agreement

between the parties, that the terms used in para. 2 of the agreement relating to the kitchen were meant only as an enabling clause specially as the

premises were being let out for nonresidential purposes and the paragraph does not restrict the use of the kitchen as a kitchen only. We accept the

findings of both the Courts below in this respect. This plea, therefore, fails.

7. No other grounds have been urged. The appeal, therefore, fails and it is dismissed.

8. In the special circumstances of this case, each party will bear its own costs in this Court.

P.N. Mookerjee, J.

9. I agree.